

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

VERONICA MCLEOD, individually
and as successor in interest to
decedent, DOLORES HERNANDEZ;
AMADO HERNANADEZ; individually
and as successor in interest to
decedent, DOLORES HERNANDEZ; and
YSIDRA REGALDO, individually,

Plaintiffs,

v.

CITY OF REDDING; GARRETT
MAXWELL, an individual; MATTHEW
BRUCE, an individual; and DOES
2-10, inclusive,

Defendants.

No. 2:22-cv-00585 WBS JDP

MEMORANDUM AND ORDER RE:
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

-----oo0oo-----

Plaintiffs Veronica McLeod and Amado Hernandez,
individually and as successors-in-interest to decedent, and
Ysidra Regaldo,¹ individually, brought this § 1983 action against

¹ Veronica McLeod and Amado Hernandez are decedent's
adult children. Ysidra Regaldo is decedent's mother.

defendants City of Redding, Garrett Maxwell, and Matthew Bruce, alleging several constitutional and state law violations in connection with the police detention and shooting of decedent Dolores Hernandez. (Docket No. 1.) Defendants now move for summary judgment. (Docket No. 27.)

I. Facts²

On December 2, 2020, at approximately 6:27 p.m., officers Bruce and Maxwell were called to the Discovery Village Shopping Center in Redding, California to respond to a report of a woman -- decedent Dolores Hernandez (hereinafter "Hernandez") -- who had used foul language and created a disturbance at the Center and then left to sit in her vehicle in the Center's parking lot. (See Defs.' SUF (Docket No. 32) ¶ 1; Bruce Dep. (Docket No. 36-5) at 9:12-18; Maxwell Dep. (Docket No. 36-3) at 25:13-19.)

Bruce approached the vehicle and spoke with Hernandez for approximately one minute without any weapons drawn. (Incident Video (Exhibit C to Patel Decl., Docket No. 29) at 0:00-1:15.) During the conversation, Hernandez "rolled her window down approximately two inches and became uncooperative and argumentative with [Bruce] (telling him that he was a 'murderer,' and that she did not have to speak with him)." (Defs.' SUF ¶ 10.) Bruce asked for Hernandez's driver's license and Hernandez "told [Bruce] she was not driving and did not have to give him

² Because there is a video recording of the entire incident (recorded by a witness in a car parked across the driving lane behind Hernandez's vehicle), the court relies largely on that recording to understand the events that occurred, but resorts to other evidence in the record where helpful to provide additional information or context.

1 'shit.'" (Id. ¶ 12.) Bruce later stated that based on
2 Hernandez's "erratic" behavior during their conversation, he
3 believed she was "[n]ot . . . of right or sound mind," possibly
4 due to drug use or a "mental health problem." (Bruce Internal
5 Affairs Interview (Docket No. 36-6) at 9:368-12:531.)

6 Hernandez reversed the vehicle a few feet past the end
7 of the parking stall while Bruce and Maxwell stepped to the left
8 side of the parking stall from the perspective of the driver,
9 apparently to allow her to leave. (Id. at 1:18-1:24; see also
10 Bruce Dep. at 62:10-13; Maxwell Dep. at 36:16-22.) As they were
11 walking away, the car stopped reversing and moved forward,
12 swerving counterclockwise towards the officers. (Incident Video
13 at 1:24-1:27.) Bruce hastened his pace, apparently to avoid
14 getting hit by the vehicle, and the vehicle stopped a few feet
15 away from his body. (See id. at 1:26-1:27; see also Bruce Dep.
16 at 30:16-17.) The vehicle briefly stopped moving and Hernandez
17 "screamed 'fuck you' and extended both of her middle fingers."
18 (See Incident Video at 1:27-1:28; Defs.' SUF ¶ 16.)

19 Bruce next took out his baton. (Incident Video at
20 1:28-1:29.) The car began to reverse again and Bruce started to
21 hit the window with the baton. (Id. at 1:30.) The vehicle
22 briefly halted when Bruce started to hit the window (which did
23 not break), then continued to reverse, but did so while moving in
24 a counterclockwise direction such that the front of the vehicle
25 moved closer to Bruce. (Id. at 1:30-1:33; see also Bruce Dep. at
26 38:4-6.) Maxwell moved towards the rear left wheel and stabbed
27 the tire with his knife. (Incident Video at 1:33-1:34; Maxwell
28 Dep. at 40:16-18.) At almost the same moment, Bruce suddenly

1 fell to the ground face forward and the front left tire ran over
2 his left leg. (Incident Video at 1:34-1:36; see also Bruce Dep.
3 at 40:4-17; Phillips Dep. (Docket No. 36-8) at 27:6-10; Bell Dep.
4 (Docket No. 36-9) at 23:16-25.)³ Maxwell drew his gun and aimed
5 it at the driver's side window. (Incident Video at 1:37.) As
6 Bruce was lying on the ground after being run over, positioned at
7 most a few inches from the tire that had run over his leg, he
8 told Maxwell to shoot Hernandez. (See id.; Bruce Dep. at 46:1-
9 10.)

10 After Maxwell drew his firearm, the vehicle moved
11 slightly forward and then stopped. (Incident Video at 1:38.)
12 Maxwell fired a volley of seven shots without providing any
13 verbal command or warning to Hernandez. (See id. at 1:38-1:39;
14 Maxwell Dep. at 17:17-21.) In the middle of the volley, the car
15 moved slowly forward while Bruce crawled away from the car on all
16 fours, and the car stopped when it ran into a nearby parked car.
17 (Id. at 1:39-1:43.) After the car stopped, Bruce repositioned
18 himself so that he was lying on his back and clutching his left
19 leg. (Id. at 1:42-1:48.)

20 Hernandez died as a result of the gunshot wounds. (See
21 Autopsy Report (Docket No. 36-11).)

22 II. Standard of Review

23 Summary judgment is proper "if the movant shows that
24

25 ³ It is disputed whether the car stopped on Bruce's leg
26 or rolled over it quickly, as the video does not clearly enough
27 show the manner in which the wheel ran over his leg. Two
28 witnesses testified that the tire did not stop on Bruce's leg
(Phillips Dep. at 27:6-13; Bell Dep. at 23:10-25), while Bruce
testified that the tire remained on his leg and pinned him down
(Bruce Dep. at 45:6-9).

1 there is no genuine dispute as to any material fact and the
2 movant is entitled to judgment as a matter of law.” Fed. R. Civ.
3 P. 56(a). A material fact is one “that might affect the outcome
4 of the suit under the governing law,” and a genuine issue is one
5 that could permit a reasonable trier of fact to enter a verdict
6 in the non-moving party’s favor. Anderson v. Liberty Lobby,
7 Inc., 477 U.S. 242, 248 (1986). While the moving party bears the
8 initial burden of establishing the absence of a genuine issue of
9 material fact, see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23
10 (1986), the underlying facts must be viewed in the light most
11 favorable to the non-moving party, see Matsushita Elec. Indus.
12 Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

13 III. Federal Claims

14 Plaintiffs’ opposition brief states that they
15 “voluntarily dismiss” the third claim alleging denial of medical
16 care under the Fourth Amendment, and fifth, sixth, and seventh
17 claims alleging municipal liability. (Docket No. 36 at 2 n.1.)
18 Accordingly, the court will grant defendants’ motion for summary
19 judgment on the abandoned claims. See Est. of Shapiro v. United
20 States, 634 F.3d 1055, 1060 (9th Cir. 2011) (affirming district
21 court’s grant of summary judgment in favor of defendant on claims
22 abandoned by plaintiff).

23 Remaining are the first and second claims under § 1983
24 alleging unlawful detention and excessive force in violation of
25 the Fourth Amendment, respectively; fourth claim under § 1983
26 alleging violation of the substantive due process clause of the
27 Fourteenth Amendment; eighth claim alleging battery under
28 California law; ninth claim alleging negligence under California

1 law; and tenth claim alleging violation of the Tom Bane Act, Cal.
2 Civil Code § 52.1. Because plaintiffs have abandoned their
3 municipal liability claims, the only remaining defendants are
4 officers Bruce and Maxwell. Defendants argue that they are
5 entitled to summary judgment on all claims, including qualified
6 immunity on the excessive force and substantive due process
7 claims.⁴

8 A. Excessive Force

9 “Qualified immunity is applicable unless the official’s
10 conduct violated a clearly established constitutional right.”
11 Pearson v. Callahan, 555 U.S. 223, 232 (2009). “The relevant,
12 dispositive inquiry in determining whether a right is clearly
13 established is whether it would be clear to a reasonable officer
14 that his conduct was unlawful in the situation he confronted.”
15 Saucier v. Katz, 533 U.S. 194, 202 (2001).

16 The Supreme Court has “repeatedly told courts -- and
17 the Ninth Circuit in particular -- not to define clearly
18 established law at a high level of generality.” Kisela v.
19 Hughes, 584 U.S. 100, 104 (2018) (quoting City & County of San
20 Francisco v. Sheehan, 575 U.S. 600, 613 (2015)). “Because use of
21 excessive force is an area of the law in which the result depends
22 very much on the facts of each case, police officers are entitled
23 to qualified immunity unless existing precedent ‘squarely
24 governs’ the specific facts at issue.” Est. of Hernandez v. City
25 of Los Angeles, 96 F.4th 1209, 1218 (9th Cir. 2024) (quoting
26 Kisela, 584 U.S. at 104) (cleaned up).

27 ⁴ Defendants do not seek qualified immunity on their §
28 1983 unlawful detention claim.

1 Here, the court concludes that there is no clearly
2 established law indicating that the use of deadly force in these
3 circumstances was unlawful. To the contrary, controlling Ninth
4 Circuit precedent -- which the officers here were entitled to
5 reasonably rely upon -- establishes that an officer does not
6 violate the Fourth Amendment when he shoots the driver of a
7 vehicle after observing his partner get run over by the vehicle
8 and his partner remains at immediate risk of being struck by that
9 vehicle.

10 The Ninth Circuit case Wilkinson v. Torres, 610 F.3d
11 546 (9th Cir. 2010), is the most directly on point. There, two
12 officers -- Key and Torres -- approached the driver of a stolen
13 vehicle on foot. As described by that court:

14 Key attempted to open the driver-side front door and
15 fell on the ground about the same time as the minivan
16 started moving in reverse. The front of the minivan
17 swung toward the driver side, and the rear of the
18 minivan swung toward the passenger side. The wheels
19 on the minivan were spinning and throwing up mud.
20 After one to two seconds, . . . Key got up and
21 'walked[] or jumped out of the way . . . so he
22 wouldn't get ran (sic) over.' Once he saw Key fall
23 down, Torres yelled at the driver to stop. Torres
24 believed that Key had been run over. The minivan
25 continued to back up, and Torres began shooting
26 through the passenger-side window. After a slight
27 pause during which he assessed the situation, Torres
28 continued firing at the driver of the minivan.

22 Id. at 549. The Ninth Circuit -- applying the rule that courts
23 look to the "totality of the circumstances" in determining
24 whether a use of force was "objectively reasonable," see Graham
25 v. Connor, 490 U.S. 386, 396-97 (1989) -- concluded that officer
26 Torres did not violate the Fourth Amendment because an officer
27 facing such circumstances could reasonably believe the vehicle
28 posed a "deadly threat." See Wilkinson, 610 F.3d at 553.

1 Many of the salient facts here are strikingly similar
2 to those in Wilkinson. Most importantly, as in Wilkinson,
3 Maxwell saw his partner fall down and perceived that he had been
4 run over (as he had, in fact, been run over). Also as in
5 Wilkinson, Maxwell perceived that his partner remained in the
6 vehicle's path.⁵ See Wilkinson, 610 F.3d at 551 (officer had
7 reasonable fear that driver posed a threat because his "fellow
8 officer was nearby either lying fallen on the ground or standing
9 but disoriented" while the driver "attempted to accelerate within
10 close quarters of two officers on foot").

11 It was entirely reasonable for Maxwell to believe that
12 the use of deadly force was lawful because his partner was lying
13 on the ground in the vehicle's path. Indeed, that Bruce was in
14 danger of being run over by the vehicle is the only conclusion
15 the court can draw based on the incident recording, which the
16 court has had the benefit of watching numerous times with the
17 ability to pause, rewind, and slow down the video. As clearly
18 depicted in the video recording, Bruce was lying on the ground at
19 most a few inches from the very tire that had just run him over,
20 while essentially pleading for his life by asking Maxwell to
21

22 ⁵ As Maxwell testified at deposition, he drew his firearm
23 "when [he] observed" that Bruce's leg had been "crushed" by "that
24 front left tire." (Maxwell Dep. at 65:5-10.) Maxwell also
25 stated in his internal affairs interview that immediately prior
26 to the shooting, he believed Hernandez was "clearly going to
27 drive over [Bruce]," "crushing his legs further" and possibly
28 "kill[ing] him." (Maxwell Internal Affairs Interview (Docket No.
36-4) at 13:598-610.) Maxwell's statements about his perception
of the danger the vehicle posed to Bruce are uncontradicted by
any evidence in the record and are fully supported by the video
recording.

1 shoot decedent.⁶

2 It is only common sense that “[a] moving vehicle can of
3 course pose a threat of serious physical harm” where “someone is
4 at risk of being struck by it.” See Orn v. City of Tacoma, 949
5 F.3d 1167, 1174 (9th Cir. 2020); see also Villanueva v.
6 California, 986 F.3d 1158, 1172 (9th Cir. 2021) (explaining that
7 the use of deadly force was not unlawful in Wilkinson because the
8 officer confronted a “chaotic” situation in which, inter alia,
9 “the officer who shot the driver had good reason to believe that
10 another officer was . . . not able to easily move out of the way
11 of an oncoming car no matter its speed”); Gonzalez v. City of
12 Anaheim, 747 F.3d 789, 794, 796-97 (9th Cir. 2014) (reversing
13 grant of summary judgment for defendant because, unlike in
14 Wilkinson, the officer -- who was inside the vehicle while
15 decedent was driving under ten miles per hour -- “was not on foot
16 next to a vehicle that might run him over at any moment should it
17 have accelerated” and “did not express concern that his partner
18 was vulnerable to being run over”) (citing Wilkinson, 610 F.3d at
19 551-52).

20 Plaintiffs argue that Bruce was not actually in danger
21 prior to the shooting because the wheel had rolled over Bruce’s
22 leg (rather than stopping on top of his leg) and was not trapping
23 him under the vehicle. However, Bruce was plainly on the ground
24 in the vehicle’s path; whether the car had briefly stopped on top
25 of his leg or run quickly over his leg makes no difference.

26
27 ⁶ Bruce asking Maxwell to shoot decedent cannot be heard
28 on the video, but the parties do not dispute that Bruce made that
statement.

1 Further, "even if [Bruce] was in fact out of harm's way by the
2 time of the shooting . . . the critical inquiry is what [Maxwell]
3 perceived." See Wilkinson, 610 F.3d at 551; see also Graham, 490
4 U.S. at 396 ("[t]he 'reasonableness' of a particular use of force
5 must be judged from the perspective of a reasonable officer on
6 the scene, rather than with the 20/20 vision of hindsight").

7 Because it was reasonable for Maxwell to believe Bruce
8 was in danger, this case is easily distinguishable from those
9 cited by plaintiffs in which the Ninth Circuit denied qualified
10 immunity to officers who used deadly force on drivers. In Orn,
11 the Ninth Circuit denied qualified immunity because "a reasonable
12 jury could conclude both that [the officer] was never in the path
13 of [decedent's] vehicle and that he fired through the passenger-
14 side windows and rear windshield as the vehicle was moving away
15 from him," and even if the vehicle was moving towards him, the
16 officer "could simply have stepped back to avoid being injured."
17 949 F.3d at 1178.

18 In Villanueva, the Ninth Circuit denied qualified
19 immunity because a jury could conclude that the driver fatally
20 shot by officers was operating the vehicle "cautiously," was 15-
21 20 feet away from the officers, and was driving slowly without
22 the vehicle "aimed" at any officer. 986 F.3d at 1171. In Acosta
23 v. City and County of San Francisco, the Ninth Circuit denied
24 qualified immunity to the officer because the driver was neither
25 driving fast nor directing his vehicle at the officer. 83 F.3d
26 1143, 1148 (9th Cir. 1996), as amended (June 18, 1996).

27 This case is also distinguishable from the non-binding
28 authority cited by plaintiffs. In Kirby v. Duva, the Sixth

1 Circuit denied qualified immunity to officers who shot a driver
2 who "was moving slowly and in a non-aggressive manner, could not
3 have hit any of the officers, and was stationary at the time of
4 the shooting." 530 F.3d 475, 482 (6th Cir. 2008). In Smith v.
5 Cupp, the Sixth Circuit denied qualified immunity because a jury
6 could conclude that "no person at the scene was ever in danger"
7 and that the officer "fired as he ran toward the driver side of
8 the car after the car passed him." 430 F.3d 766, 774 (6th Cir.
9 2005). Finally, in Kosakoff v. San Diego, the district court
10 denied qualified immunity because a jury could conclude that the
11 driver was "backing away from the officers" and therefore "there
12 was no longer any threat to the officers." No. 08-cv-1819 UEG
13 NLS, 2010 WL 1759455, at *6 (S.D. Cal. Apr. 29, 2010).

14 Unlike the above authorities cited by plaintiffs, the
15 instant case presents a situation in which Maxwell "saw [Bruce]
16 fall, thought [Bruce] had been run over, and was afraid" that the
17 vehicle would again run Bruce over. See Wilkinson, 610 F.3d at
18 551. As the Ninth Circuit explained in Wilkinson, an officer
19 could "reasonably believe that the [vehicle] posed a deadly
20 threat" under these circumstances, justifying the use of deadly
21 force. See id. at 553.

22 Plaintiffs present various arguments as to why the use
23 of force was unreasonable, suggesting that defendants should have
24 given verbal warnings to Hernandez before resorting to force, or
25 that defendants should have used less intrusive means to control
26 the situation, especially given that decedent was mentally ill.
27 These arguments ignore that the officers here confronted a
28 "tense, uncertain, and rapidly evolving" situation in which they

1 believed that decedent posed a risk to their physical safety.
2 See Graham, 490 U.S. at 396. Under the chaotic, apparently life-
3 threatening circumstances presented here, it was not "feasible"
4 for the officers to pause to issue warnings or to deliberate on
5 factors such as what medical conditions decedent may have had and
6 what alternative tactics may or may not have been available. See
7 Tennessee v. Garner, 471 U.S. 1, 11-12 (1985). In the now famous
8 words of Justice Holmes, "[d]etached reflection cannot be
9 demanded in the presence of an uplifted knife." Brown v. United
10 States, 256 U.S. 335, 343 (1921).

11 The Supreme Court has taught us that qualified immunity
12 protects "'all but the plainly incompetent or those who knowingly
13 violate the law.'" Ashcroft v. al-Kidd, 563 U.S. 731, 743 (2011)
14 (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)); see also
15 Kisela, 584 U.S. at 104 (same). For the reasons discussed above,
16 this court cannot in good conscience brand these defendants as
17 plainly incompetent, nor can it send the public message that they
18 knowingly violated the law. Accordingly, the court grants the
19 officers qualified immunity on the excessive force claim.

20 B. Detention⁷

21 ⁷ The court has doubts about whether a detention -- as
22 distinct from the use of deadly force -- is cognizable as a
23 standalone Fourth Amendment claim in a survivor's action. See
24 Alderman v. United States, 394 U.S. 165, 174 (1969) ("Fourth
25 Amendment rights are personal rights which . . . may not be
26 vicariously asserted."); Moreland v. Las Vegas Metro. Police
27 Dep't, 159 F.3d 365, 369 (9th Cir. 1998) ("In § 1983 actions,
28 however, the survivors of an individual killed as a result of an
officer's excessive use of force may assert a Fourth Amendment
claim on that individual's behalf if the relevant state's law
authorizes a survival action."). Nevertheless, because the
question was not discussed in the parties' briefing, for purposes
of this motion the court assumes that such a claim is cognizable

1 Plaintiffs argue that Bruce smashing the car window
2 with his baton and Maxwell deflating one of the car tires with a
3 knife constituted an illegal detention because the officers did
4 not have probable cause. Defendants argue that they had probable
5 cause to arrest decedent for assault with a deadly weapon. See
6 Cal. Penal Code § 245(a)(1).

7 "To determine whether an officer had probable cause for
8 an arrest, [courts] examine the events leading up to the arrest,
9 and then decide whether these historical facts, viewed from the
10 standpoint of an objectively reasonable police officer, amount to
11 probable cause." Dist. of Columbia v. Wesby, 583 U.S. 48, 56-57
12 (2018) (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003))
13 (cleaned up). "Because probable cause deals with probabilities
14 and depends on the totality of the circumstances, it is a fluid
15 concept that is not readily, or even usefully, reduced to a neat
16 set of legal rules." Id. (quoting Pringle, 540 U.S., at 371;
17 Illinois v. Gates, 462 U.S. 213, 232 (1983)) (cleaned up).

18 Here, it is not clear from the video whether decedent
19 intentionally drove at the officers, or whether she simply made
20 an error in driving because she was not expecting the officers to
21 have moved towards her car. Further, the vehicle stopped and did
22 not make contact with either officer prior to the officers
23 attempting to gain control of the vehicle. Based on the evidence
24 before the court, a jury could conclude that the officers lacked
25 probable cause to believe decedent had committed assault with a
26 deadly weapon. See McKenzie v. Lamb, 738 F.2d 1005, 1008 (9th

27
28 and addresses the merits.

1 Cir. 1984) ("The factual matters underlying the judgment of
2 reasonableness generally mean that probable cause is a question
3 for the jury, and summary judgment is appropriate only if no
4 reasonable jury could find that the officers did or did not have
5 probable cause to arrest.") (internal citations omitted).
6 Accordingly, the court will deny summary judgment on the unlawful
7 detention claim.⁸

8 C. Substantive Due Process

9 Plaintiffs contend that defendants interfered with
10 their right to familial association under the substantive due
11 process clause of the Fourteenth Amendment. Under the rubric of
12 substantive due process, plaintiffs must ultimately show that the
13 officers' conduct "shocks the conscience -- a standard that
14 requires more of the plaintiffs than the Fourth Amendment
15 excessive-force standard often applied in police shooting cases."
16 Ochoa v. City of Mesa, 26 F.4th 1050, 1054 (9th Cir. 2022).

17 Where, as here, the situation confronted by an officer
18 involved "'fast paced circumstances presenting competing public
19 safety obligations'" and "'escalate[d] so quickly that the

20 ⁸ It is important to note that whether the officers had
21 probable cause prior to their attempts to gain control of the
22 vehicle is a separate question from that of the reasonableness of
23 the use of deadly force. The Supreme Court has unequivocally
24 rejected the Ninth Circuit's former "provocation rule" that
25 "ma[de] an officer's otherwise reasonable use of force
26 unreasonable if (1) the officer intentionally or recklessly
27 provokes a violent confrontation and (2) the provocation is an
28 independent Fourth Amendment violation." See County of Los Angeles v. Mendez, 581 U.S. 420, 426-27 (2017). Thus, even if the officers lacked probable cause to detain plaintiff at the beginning of the incident and unnecessarily escalated the situation by doing so, their use of deadly force once decedent had run over Bruce with her car was nonetheless protected by qualified immunity, as discussed above.

1 officer [had to] make a snap judgment," courts apply the
2 "purpose-to-harm" test. See id. (quoting Porter v. Osborn, 546
3 F.3d 1131, 1137) (9th Cir. 2008)) (alterations in original).
4 This is not a case where "actual deliberation [by the officers]
5 is practical," and therefore the "deliberate indifference"
6 standard does not apply. See Wilkinson, 610 F.3d at 554 (holding
7 that the purpose-to-harm standard "clearly" applied to "a
8 situation involving an accelerating vehicle in dangerously close
9 proximity to officers on foot"); see also Porter, 546 F.3d at
10 1137 (applying purpose-to-harm standard to minutes-long incident
11 during which officer used deadly force on driver accelerating
12 towards officer, even though officer later testified that he did
13 not perceive a high likelihood of being harmed by the vehicle).
14 The purpose-to-harm test "requires a more demanding showing that
15 the officers acted with a purpose to harm the decedent for
16 reasons unrelated to legitimate law enforcement objectives,"
17 which include "arrest, self-protection, and protection of the
18 public." Ochoa, 26 F.4th at 1054 (cleaned up).

19 Plaintiffs have not pointed to any evidence indicating
20 that the officers acted with a purpose to harm unconnected to
21 legitimate law enforcement objectives. To the contrary, the
22 video of the encounter shows that the officers initially
23 approached decedent to speak with her without any weapons drawn
24 and then moved away from the car to allow her to leave. And as
25 already discussed, the use of deadly force was motivated by the
26 desire to protect the safety of an officer. Cf. A.D. v. Cal.
27 Highway Patrol, 712 F.3d 446, 457-58 (9th Cir. 2013) (agreeing
28 with jury's conclusion that officer had purpose to harm and

1 therefore violated substantive due process when he emptied his
2 gun at driver who was either stationary or driving away from
3 officers, officers were not in vehicle's path, and other officers
4 at the scene testified that they did not feel their safety was
5 threatened).

6 Accordingly, the court concludes that defendants are
7 entitled to summary judgment on the familial association claim,
8 as plaintiffs have not put forth any evidence that might tend to
9 show the officers acted with a purpose to harm. For the same
10 reason, defendants are entitled to qualified immunity on the
11 substantive due process claim. See Porter, 546 F.3d at 1140
12 (where there is no genuine dispute that the purpose-to-harm test
13 applies, the availability of qualified immunity "turns on whether
14 [plaintiffs] can present facts to the district court that would
15 justify a jury finding that [defendants] acted with an
16 unconstitutional purpose to harm").

17 IV. State Claims

18 A. Negligence

19 Under California law, police officers have a duty "to
20 act reasonably when using deadly force." Hayes v. County of San
21 Diego, 57 Cal. 4th 622, 628 (2013). "The reasonableness of an
22 officer's conduct is determined in light of the totality of
23 circumstances," including "the officers' preshooting conduct."
24 Id. at 629, 638. "[P]reshooting circumstances might show that an
25 otherwise reasonable use of deadly force was in fact
26 unreasonable." Id. at 630. California negligence law is
27 "broader" than the Fourth Amendment excessive force analysis,
28 which typically focuses on the officer's conduct "at the time of

1 shooting" and does not examine the officer's "pre-shooting
2 decisions." Tabares v. City of Huntington Beach, 988 F.3d 1119,
3 1125 (9th Cir. 2021).

4 The evidence here is sufficient to establish a genuine
5 dispute of material fact as to whether the officers' pre-shooting
6 conduct negligently escalated the situation, culminating in the
7 use of deadly force. See Tabares, 988 F.3d at 1126-27 (9th Cir.
8 2021) (denying summary judgment on California negligence claim
9 where jury could conclude that officer's tactical decision making
10 did not take into account that decedent was mentally ill and
11 unnecessarily escalated the encounter); see also Grudt v. City of
12 Los Angeles, 2 Cal. 3d 575, 587 (1970) ("even if the jury
13 believed that [decedent] accelerated his automobile toward
14 [officer], they might have found negligence on the part of the
15 officers in interpreting the circumstances as necessitating a
16 shotgun blast and four rounds from a revolver, designed to
17 kill").

18 Accordingly, the court will deny summary judgment on
19 plaintiffs' negligence claim.

20 B. Battery

21 To maintain a state law battery claim against a police
22 officer, "a plaintiff must prove that the [officer's] use of
23 force was unreasonable." Brown v. Ransweiler, 171 Cal. App. 4th
24 516, 527 (4th Dist. 2009). This requires the same "totality of
25 the circumstances" inquiry applied to negligence claims,
26 discussed above. See Hayes, 57 Cal. 4th at 638 (state tort law
27 considers "the totality of circumstances surrounding the
28 shooting, including the officers' preshooting conduct");

1 Villalobos v. City of Santa Maria, 85 Cal. App. 5th 383, 389 (2d
2 Dist. 2022) (evaluating both battery and negligence claims
3 against police officers under the reasonableness standard
4 articulated in Hayes); Koussaya v. City of Stockton, 54 Cal. App.
5 5th 909, 937 (3d Dist. 2020) (same); see also Cal. Civ. Jury
6 Instr. 1305B (explaining that in determining whether a police
7 officer's use of deadly force constituted a battery, jurors must
8 consider the "totality of the circumstances . . . including the
9 conduct of [the officer] leading up to the use of deadly force").

10 Because the court has determined that there is
11 sufficient evidence for a jury to conclude that the officers'
12 actions were unreasonable under California law, the court will
13 deny the motion for summary judgment on the battery claim.

14 C. Tom Bane Act

15 The Tom Bane Act, Cal. Civil Code § 52.1, requires that
16 defendants had "specific intent" to violate plaintiffs' rights.
17 See Cornell v. City & County of San Francisco, 17 Cal. App. 5th
18 766, 801 (1st Dist. 2017). This requirement may be satisfied by
19 demonstrating that the officers acted with "reckless disregard of
20 constitutional or statutory prohibitions or guarantees." See id.
21 at 803-04; see also Reese v. County of Sacramento, 888 F.3d 1030,
22 1045 (9th Cir. 2018).

23 The evidence shows that Officer Bruce attempted to
24 smash the window and Officer Maxwell attempted to puncture the
25 tire of a vehicle that had not hit either of them and was either
26 stationary or moving very slowly, without trying to communicate
27 with the driver or move out of the vehicle's path. A jury could
28 conclude that these actions evidence reckless disregard to

1 decedent's right to be free from unreasonable seizure. See
2 Cornell, 17 Cal. App. 5th at 804 (specific intent standard was
3 satisfied where officers had doubts about existence of probable
4 cause but nonetheless detained plaintiff rather than taking the
5 "opportunity to exercise restraint"). Accordingly, the court
6 will deny summary judgment on the claim brought under the Tom
7 Bane Act.

8 IT IS THEREFORE ORDERED that defendants' motion for
9 summary judgment (Docket No. 27) be, and the same hereby is,
10 GRANTED as to the second claim alleging excessive force and
11 fourth claim alleging violation of substantive due process. The
12 motion is DENIED in all other respects.

13 Dated: June 11, 2024



14 WILLIAM B. SHUBB
15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28